Bail Slip

The Appellant/Accused viz., P.Ganesan was directed to be released on bail by the order of this Court dated 04.12.2000 and made in Crl.M.P.No.8717/2000 in Crl.A.No.1105/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1105 of 2000
and
Crl.M.P.No.8717 of 2000

P.Ganesan .. Appellant/Accused

vs.

State rep.by
the Inspector of Police
SPE/CBI/ACB,Madras
through Public Prosecution
CBI,Madras .. Respondent/complainant

This appeal is filed under Section 374 of Cr.P.C. against the Judgment in Special C.C.No.1 of 1998 dated 2.11.2000 on the file of the Special Judge at Pondicherry.

For Appellant : Mr.T.P.Manoharan
For Respondent : Mr.N.Chandrasekaran
Spl.Public Prosecutor
CBI Cases

JUDGMENT

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This appeal has been preferred against the Judgment in Special C.C.No.1 of 1998 on the file of the Special Judge at Pondicherry, the accused who has been charged under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.(hereinafter referred to as"the Act") is the appellant herein.

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2. The case of the prosecution is that on20.1.1994, the accused had demanded Rs.500/- for the purpose of shifting the telephone line from the guest house premises from 3rd Street, Anna Nagar, Pondicherry to Victoria Nagar, Pondicherry and also for installing a new push button model phone and that he had demanded and accepted a sum of Rs.200/- on 20.1.1994 itself and had demanded and accepted the remaining amount of Rs.300/- from the complainant as bribe. Hence the charge.

3. On appearance of summons, the learned Special Judge furnished the copies under Section 207 of Cr.P.C. to the accused and when charges under Section 7 and 13(2)r/w 13(1)(d) of the Act were framed and questioned the accused pleaded not guilty.

4. On the side of the prosecution P.Ws 1 to 6 were examined. Exs P1 to P20 were exhibited and M.Os.1 to 7 were marked.

5. P.W.1 is the Sub Divisional Engineer of Telephone Department who would admit that the accused is working in the same department as a line man and after perusing the documents produced before him by the Investigation Officer in this case like F.I.R, the complaint, statement of witnesses and other related documents, after getting himself satisfied in respect of prima facie case has been made out against the accused,he gave his sanction of prosecution against the accused under ExP2.

5a. P.W.2 is the complainant, who is the storekeeper in M/s Cirfab Pvt Co., and M/s Pondy Polimer Co., and that Mr.B.S.Reddy is the Administrative Manager of the said Company. The telephone indicator No.37951 was in use in old guest house of the company at Anna Nagar, Pondicherry and the same was shifted to new premises at No.13, Victoria Nagar, Pondicherry. Ex P3 is the application for shifting of the telephone connection by the Company and as per the directions of the Manager Mr.B.S.Reddy, he went to Victoria guest house on 20.1.994 where the accused Ganesan also came there for the purpose of giving new telephone connection and after effecting the connection, he said that he will come back for changing the instrument into that of a push button type and that on 20.1.1994 itself,the accused had demanded Rs.500/- for giving the connection and also for installing a new model telephone and he had given Rs.200/- on 20.1.1994 itself for having effected the new connection and that he informed the Administrative Manager Mr.B.S.Reddy about the demand of bribe amount by the accused and also a part of the bribe amount of Rs.500/- ie., Rs 200/- has been given to the accused by him(P.W.2) and that the accused had stated that he will come back and collect the remaining bribe amount of Rs.300/- from him at Victoria guest house. Since the Administrative Manager Mr.B.S.Reddy has instructed him not to give the bribe amount of Rs.300/- to the accused but to prefer a complaint with Vigilance Department, he (P.W.2)has preferred a complaint Ex P4 with CBI ACB,Madras and that on 28.1.1994, at about 2.30p.m., he went to the guest house at Victoria Nagar and the accused Ganesan also came there at about 3.00p.m and changed the instrument into push button

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type and after installation of the push button type, the accused demanded an amount of Rs.300/- but he has been given the amount to the accused but requested him to come in the late evening. Accordingly, the accused informed him that he will return back to the Victoria guest house between 5.30p.m and 6.00p.m., and to keep the amount of Rs.300/- ready and after the accused left the guest house, he contacted Mr.B.S.Reddy over phone informing him that the accused had installed the instrument and also demanded Rs 300/- from him and as per the instruction of Mr.B.S.Reddy, he(P.W.2) asked the accused to come in the evening and he returned. As per instruction of Mr.B.S.Reddy, he met the CBI officials at Uppalam guest house along with Rs.300/- and lodged Ex P4 complaint where P.W.5, the Inspector of Police Premkumar, another Inspector Aranganathan, D.S.P.Ramasamy and Head Constable Jayamohan were present and immediately two unknown persons arrived at Uppalam guest house and the Inspector of Police introduced them to him as Sankaralingam and Singaravelu of Secretariat and prepared Entrustment mahazar Ex P5 wherein the witnesses have signed. As mentioned in Ex P5, entrustment Mahazar, a demonstration was conducted by the Inspector by taking water in a glass and mixed sodium carbonate powder and asked the trap witness Sankaralingam to dip his hands when he dipped so, there was no change in the colour of the solution. Phenolphthalein powder was smeared on the currency notes produced by him(P.W.2) and Sankaralingam was asked to handle the currency notes and afterwards,he was asked to dip his fingers in the sodium carbonate solution. After he dipped so, the colourless solution turned pink colour. The Inspector of Police, instructed him(P.W.2) not to touch the currency notes unless it was demanded by the accused Ganesan. As per the instruction of the Inspector of Police,Prem Kumar, he and P.W.3 Sankaralingam went to Victoria Nagar guest house in TVS 50 moped and trap team members were followed them in a van. He (P.W.2) and Sankaralingam were waiting in the hall of the guest house for the arrival of the accused and other team members hidding themselves in the bed room of the guest house , the Inspector of Police Mr.Prem Kumar has also instructed him (P.W.2) to give signal by wiping his face with a kerchief since the accused had received the bribe amount. The accused came to the guest house at about 6.30p.m. and enquired whether the instrument was functioning properly and then demanded Rs.300/- from him(P.W.2). Immediately, he took out the currency notes from his pocket and handed over the same to the accused who after counting the same kept in his shirt pocket. The currency notes are Rs.100 in denomination numbering three. After the accused had received the tainted amount, he gave signal as instructed by the Investigating Officer to the trap team who were hidding in the bed room. The Inspector of Police Mr. Prem Kumar and his trap team entered into the hall and after introducing him to the accused and informed the accused that he is under arrest. The recovery mahazar was prepared under Ex P6, for the seizure of the currency notes bearing Nos.8AQ 247699,4GD 424255 and 9LG 762252 viz., M.Os 1 to 3 and the trap was completed at 7.45p.m.

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5b. P.W.3 Sankaralingam is the witness in Ex P5 mahazar. According to him, as per the instruction of the under Secretary of D.P. and A.R.Section, Secretariat, Pondicherry, he went and met the Vigilance Officer of CBI Department and as per his instructions along with another witness, Thiru R.Singaravelu and along with the Inspector of Police Mr.Prem Kumar and his team mates went to Uppalam guest house where P.W.2 was introduced to him. The complaint preferred by P.W.2 was also read over to him. The Entrustment Mahazar Ex P5 was prepared in his presence and he would narrate about the instructions given by Mr.Prem Kumar, the Investigating Officer to P.W.2 and accordingly both he(P.W.3) and P. W.2 went to Victoria guest house at about 6.00p.m., , the accused came there and demanded Rs.300/- from P.W.2 as a bribe for shifting the telephone and also changing the telephone instrument. P.W.2 handed over the tainted currency notes to the accused and after counting the same, kept in his shirt pocket and P.W.2 gave pre arranged signal to the trap team. Immediately CBI Officials entered into the hall from their hidding place and Phenolphthalein test was conducted and when the accused was asked to dip his right hand in the said solution,it turned into pink in colour which was sealed and labelled as"A". The said pink colour bottle solution is M.O.4 and in another glass sodium carbonate solution was prepared and the accused was asked to dip his left finger into the solution which also turned into pink in colour which was labelled as"B".M.O.5 is the said bottle. Ex P6 mahazar was prepared for the trap test conducted in the presence of him(P.W.3) and other witnesses and the accused. His shirt pocket in which the accused had placed ill-gotten money was subjected to the phenolphthalein testM.O.7 is the shirt of the accused . The numbers of the currency notes recovered from the accused were compared with the numbers of the currency notes noted in Ex P5 mahazar and found to be tallied with each other and the accused was released on bail. Ex P8 is the search list prepared by the Inspector of police in his presence.

5c. P.W.4 is the then Assistant Manager of Pondicherry telephone. He speaks about the application made by P.W.1 for the shifting of his telephone from Anna Nagar guest house to Victoria Nagar guest house. Ex P9 is the advice for shifting of the telephone issued by him and after Ex P9 work of shifting was entrusted to one Ranganathan, Phone Inspector who had sent the lineman, the accused herein by entrusting the work for shifting the telephone to Victoria Nagar guest house from Anna Nagar guest house. After completion of the out door work, Ex P11 jumper slip was issued under his signature. He would depose that if the subscriber carries out the internal wiring then a sum of Rs.300/- will be given to the subscriber from out of the shifting fee of Rs.600/-. Under Ex P15, the customer in this case has claimed Rs.300/- for the internal work carried out by them. Ex P16 contains the shift particulars. Ex P17 is the gate pass wherein the accused has also signed . Under Ex P17 he has ordered for a refund of Rs.300/- to the subscriber since the internal work was carried by them.

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5d. P.W.5 is the Inspector of Police who had conducted the investigation in this case. He speaks about the complaint preferred by P.W.2 against the accused alleging that he had demanded Rs.300/- towards bribe for shifting the telephone connection from Anna Nagar guest house to Victoria Nagar guest house at Pondicherry and also about the trap conducted by him on 28.1.1994 at Victoria guest houe and also about the arrest of the accused in the trap.

5e. P.W.6 is the successor of P.W.5 who had laid the chargesheet after completing the investigation under Section 13(2) r/w 13(1)(d) of the Act against the accused.

6. When the incriminating circumstances were put under Section 313 of Cr.P.C. to the accused, he denied his complicity with the crime. After going through the evidence, both oral and documentary, the learned trial Judge has convicted the accused under Section 7 of the Act to undergo six months Rigorous imprisonment and a fine of Rs.500/- in default sentence and convicted under Section 13(2) r/w 13(i)(d) of the Act to undergo one year rigorous imprisonment and to pay a fine of Rs.500/-in default to undergo one month simple imprisonment. The learned trial Judge further ordered that sentence to run concurrently and default sentence to run consecutively. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

7. Now the point for determination in this appeal is whether the conviction and sentence imposed against the accused under Sections 7 and 13(2) r/w 13(1)(d) of the Act is liable to be set aside for the reasons stated in the memorandum of appeal?

8. Heard Mr.T.P.Manoharan, learned counsel for the appellant and Mr.N.Chandrasekaran, learned Special Public Prosecutor for CBI Cases and considered their rival submissions.

9.The Point:
The learned counsel appearing for the appellant relying on the evidence of P.W.2 in the cross examination that the demand of bribe by the accused , according to P.W.2 is not from him but only from Mr.B.S.Reddy. Placing on this particular portion of evidence in the cross examination of P.W.2 alone, the learned counsel would base his argument contending that the efficacy of the prosecution case shall fall. Forgetting the fact that in the chief examination and also in Ex P4 complaint preferred by P.W2 that P.W.2 has specifically deposed as well as mentioned respectively that after shifting of the telephone indicator from Anna Nagar guest house to Victoria Nagar guest house on 20.1.1994 and also after changing the new push button instrument on 28.1.1994 in the Victoria Nagar guest house at about 3.00 p.m., the accused had demanded Rs.300/- only from P.W.2.Further it is in evidence of P.W.2 that the accused had already received the part of the bribe amount of Rs.200/- from him even on 20.1.1994, after he had effected the shifting of the telephone instrument from Anna Nagar guest

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house to Victoria Nagar guest house. Through out it is the case of P.W.2 that after shifting on 20.1.1994, the accused had demanded Rs.500/- for completing his work. When this was informed to B.S.Reddy, the Administrative Manager who is not inclined to give bribe to the accused had instructed him(P.W.2) to prefer the complaint with the CBI police. This part of the evidence was spoken to by the Investigating Officer (P.W.5) in the cross examination as to the fact that he had received a phone call on 28.1.1994 at about 3.00p.m., from B.S.Reddy informing him that a lineman is demanding Rs.500/- as bribe for shifting the telephone indicator from Anna Nagar guest house to Victoria Nagar guest house and that he has instructed P.W.2 to prefer a complaint with the police and that P.W2 will met him(P.W.5) with the complaint.

10. The learned counsel appearing for the appellant would contend that the non examination of B.S.Reddy is fatal to the prosecution case . But only under the instruction of B.S.Reddy, the complaint Ex P4 was preferred by P.W.2 as spoken to by P.W.2. It is a trap case. There is no motive attributed against P.W.3 the trap witness to depose falsehood against the accused.

11. The learned counsel appearing for the appellant relying on a decision reported in Paul Satyaraj,In re(1969 L.W.(cri) 72 and would contend that there must be corroboration to prove the demand and acceptance of the bribe amount. The short facts of the said case are that one Paul Satyaraj was convicted under Section 161,IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and sentenced to undergo R.I for one year on the latter count, by the Special Judge,Tirunelveli in Special Case No.5 of 1966. The charge against the appellant is that he being a public servant, accepted a sum of Rs.20/- at about 8.20 a.m., on 29th March 1966 from one Subba Naicker as gratification other than legal remuneration as a motive or reward for expediting the issue of a cheque due to P.W.1 in respect of contract works executed by him. On complaint preferred by P.W.1, P.W.5, the Investigating Officer searched the appellant's right side shirt pocket and recovered two ten rupee notes. The numbers of the notes recovered from the appellant tallied with the numbers noted in the mahazar. P.W.5 also seized five bills Exs P1 to P5 from the table. In that case, for the demand and receipt of the ill-gotten amount, there is no corroboration for the evidence of P.W.1. Only under such circumstances, the appeal preferred by the accused before this Court was allowed with the following observations.

> " There cannot be any doubt in this case that the currency notes were recovered from the shirt pocket of the appellant. But the case of the appellant is that he had hung his shirt in the chair and went for a bath and that he came half an hour later and wore the shirt and within a few seconds after that P.W.5 and others came. By this statement, he suggested that the money could have been planted in his shirt without his knowledge. According to him there was misunderstanding

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between P.W.1 and himself as on prior occasions he raised objections in respect of the bills. ..... The most important question to be considered is whether the appellant demanded Rs.20/- before the trap. We have only the evidence of P.W.1 . It is not disputed that the appellant used to s tay in the office and take bed there. The learned Public Prosecutor strongly relies upon the fact that at the time when P.W.5 and others went there they saw him actually working on the table in respect of the matter relating to P.W.1 and they had seized those records, and from this , he would urge that the appellant must have been attending to the work of P.W.1 only after receiving money. I do not think that it is the only inference that can be drawn. The appellant admitted that as a matter of routine, he was having all those records on his table and attending to them. There is nothing improbable about it as he used to stay there and do work even out of office hours.. . . . . Though there may be suspicion against the appellant there is no conclusive proof that he accepted Rs.20/- in consequence of a demand made by him. The possibility of P.W.1 planting the money in the shirt pocket when it was kept hung in the chair cannot be eliminated."

But the said dictum will not be applicable to the present facts of the case. Here in this case, the demand and acceptance was spoken to by P.W.2 as well as by P.W.3, the trap witness.Whereas the same is lacking in the case relied on by the learned counsel above.

12. At this juncture, the learned counsel would rely on a decision T.Subramanian -v State of T.N(2006) 1 Supreme Court Cases,401). The appellant in the said case was working as the Executive Officer of Sri Swarnathaneswar Temple, Chithaimoor,Tamil Nadu . P.W.1 was in occupation of six cents of temple land, approached the appellant for securing the patta in his favour in respect of the said land. The appellant promised to help the P.W.1 and on 2.7.1987, the appellant sent word to P.W.1 to meet him. P.w.1 along with his friend P.W.2 went and met the appellant. The appellant then demanded Rs 450/- to help P.W.1 and then the said amount was reduced to Rs.300/-. P.W.1 informed the appellant that he was having Rs.100/- only and paid the same to the appellant. But the appellant told P.W.1 that only if he paid the balance amount, he would make arrangements for transfer of patta. The said demand was reiterated on 9.7.1987 also. Subsequently, P.W.1 and P.W.2 met the appellant and paid Rs.250/- towards lease arrears due by P.W.1. P.W.1 not willing to pay the bribe amount gave a complaint Ex P1 to the Inspector of Vigilance and Anti Corruption on 10.7.1987 and thereafter a trap team was formed by the said Inspector and after the successful completion of the trap, a charge sheet was filed against the appellant. The defence taken by the accused in that case was P.W.1 came with P.W.2 and informed that P.w.6(Thyagarajan) who was due in

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lease amount to the temple, had requested him(P.W.1) to hand over Rs.2000/- towards his lease rent arrears. But P.W.1 told that Thyagarajan would himself come and collect the receipt the next day. The trial Judge accepting the evidence of the accused, dismissed the case of the prosecution on the ground that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt and particularly the demand and acceptance of a sum of Rs.200/- by the appellant as illegal gratification was not proved by the prosecution. On appeal, this Court allowed the appeal which necessitated the accused to approach the Honourable Apex Court wherein the Honourable Apex Court allowing the appeal preferred by the accused observed as follows:

> "The evidence throws out a clear alternative that the accused was falsely implicated at the instance of P.Ws1 ,2 and 6. If two views were possible from the very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs.200/- as illegal gratification. Thus the trial Court was right in holding that the charge against the appellant was not proved and the High Court was not justified in interfering with the same."

The important point to be noted in this case is that the definite defence raised by the accused in that case is that the amount received by him was not of any bribe amount but only the arrears of lease amount due to him from P.W.6 Thyagarajan which was tendered through P.W.1 on the date of occurrence. But that is not the case herein. Here absolutely, there is no defence taken by the accused. The accused has not examined any witness on his side. There is no explanation forthcoming from the accused why he went to Victoria Nagar guest house after completing his work at 3.00p.m itself, again at 6.05p.m., It is the definite case of the prosecution that the accused after demand of bribe amount for having effected shifting of the telephone indicator from Anna Nagar guest house to Victoria Nagar guest house, on 20.1.1994 and after demanding Rs 500/- and receiving Rs.200/- on that day itself from P.W.2 and thereafter on 28.1.1994, he had installed a new push button type instrument at Victoria Nagar guest house at 3.00p.m itself has demanded the balance of principal amount of Rs.300/- for the service, he has rendered and returned by saying that he will come in the evening to collect the bribe amount. There is absolutely no defence projected by the accused in this case and there is no explanation forthcoming from the accused as to why he went for the second time at about 6.05p.m., to Victoria Nagar guest house, when the fact remains that Victoria Nagar guest house is not the working place of the accused. The demand of Rs.300/- on 28.1.1994 by way of bribe was spoken to by P.W.2 and the acceptance of the same was proved through P.W.2 and P.W.3 a trap witness.

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13. The learned Special Public Prosecutor for CBI Cases relying on a decision reported in Madhukar Bhaskarao Joshi-v- State of Maharashtra(2001 Supreme Court Cases(cri) 34) and contended that once the prosecution establishes that gratification was paid and accepted by Public Servant, presumption arises that it was paid and accepted as a motive or reward to do or forbear from doing any official act. The appellant in that case was a Sub Engineer in the Maharashtra State Electricity Board. The appellant demanded Rs.550/- as reward for granting sanction for the additional load. P.W.1 assured that the sum would be paid and on that assurance the appellant sanctioned the additional load of power. Then there was a little bargaining and the appellant reduced the amount to Rs.300/- and agreed to collect that amount from the office of P.W.1. In the meanwhile, P.W.1 lodged a complaint with the Anti Corruption Bureau. They arranged a trap pursuant to which the appellant was caught red handed with the tainted currency notes. Later he was charge sheeted. The trial Court and the High Court found that the public servant failed to prove that the amount received by him was legally due to him otherwise. The trial Court convicted him under Section 5(2) of the Act of 1947, and sentenced him to rigorous imprisonment for one year and a fine of Rs.5,000/- Though he was convicted under Section 161 of the Indian Penal Code also the Court did not award any separate sentence on that account. In an appeal, the High Court concurred with the finding and confirmed the conviction reduced the imprisonment limb of the sentence to one day but enhanced the fine limb to Rs.3000/-. When the matter came up before the Honourable Apex Court by way of appeal, the Honourable Apex Court has held as follows:

> "P.W.1 lodged a complaint with the Anti-corruption Bureau. They arranged a trap to catch the appellant red handed. After the scheme for the trap was finalised the appellant was informed of the readiness of P.W.1 to pay the amount desired by him. On 25.2.1980, around 8.00 p.m., the appellant went to the office of P.W.1. On seeing him P.W.1 switched on a concealed tape recorder. There was some dialogue between them which got recorded on the tape recorder. However, when other customers visited the same office the appellant indicated to P.W.1 through a gesticulation about his readiness to accept the promised money then and there. It was then that P.W.1 handed over the pre-arranged currency notes to the appellant. P.W.1 transmitted the message through a signal to the members of the Anti-corruption Squad who were waiting outside. Those persons then rushed to the room and caught the appellant red- handed with the tainted currency notes. Later the case was charge sheeted against him. After recording the evidence relating to the said trap the Special Judge examined the appellant under Section 313 of the Code of Criminal Procedure. The appellant filed a written statement in which he said, inter alia, that he went

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to the office of P.W.1 on the said night as he was requested to reach there for a discussion about certain programmes of the "Sindhi Association" in which, perhaps both were interested. While they were talking on that subject some persons reached there. Then the appellant stood up and was about to leave the place, but then P.W.1 paid him some money saying that it was a gift. The appellant told him that he would not accept any such gift. However, the appellant wanted to ask his manager as to why P.W.1 was giving such gifts to him. But before he could actually hand over the money back to P.W.1 he was caught by the office bearers of the Anti-Corruption Bureau. The above is, in substance, the statement made by the appellant in Court through the written submission. "

After elaborately discussing about the meaning of gratification as defined in various dictionaries, it has further held by the Honourable Apex Court as follows:

" Where, in any trial or an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of Sub section(1) of Section 13 it is proved that an accused person has accepted or obtained or has a greed too accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word"gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the Court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word"gratification" must be treated in the context to mean any payment for giving

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satisfaction to the public servant who received it. In Moohmoodkhan Mahboobkhan Pathan.v.State of Maharashtra this Court has taken the same meaning for the word"gratification" appearing in Section 4(1) of the PC Act of 1947. We quote the following observations.(SCC P.603. Para 7) The primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what the accused received was gratification. The word" gratification' is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learner's Dictionary of Current English, the word"gratification" shown to have the meaning " to give pleasure or satisfaction to'. The word 'gratification' is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient." We , therefore, repel the contention of the learned counsel that the prosecution has a further duty to prove beyond the fact that P.W.1 had paid the demanded money to the appellant for enabling it to lay the hand on the legal presumption employed in the Prevention of Corruption Act. We may point out that the defence did not even attempt to prove that the amount received by the appellant was not accepted as a reward or motive for the official act done by him, except the ipse-dixit of the appellant, that too made at the fag end of the trial when he put in a written statement of his defence. Hence no exception can be taken to the conviction passed by the trial Court which was concurred by the High Court in respect of the offence under Section 5(2) of the Act of 1947.''

Ultimately the sentence awarded by the trial Court was restored by the Apex Court. So from the above ratio, it is clear that the bounden duty of the prosecution in a case like this, is to prove the demand and acceptance of the bribe amount by the accused and nothing more than that as far as this case is concerned, even though the ill-gotten amount is meagre, the prosecution has proved beyond any reasonable doubt that only as a public servant, the accused for the service, he has rendered to P.W.2's Company has demanded and accepted Rs. 500/- ie., Rs.200/- on 20.1.1994 and the balance of Rs.300/- on 28.1.1994 and was caught red-handed in the trap mechanism adopted by P.W.5. The accused has been convicted under Section 7 of the Act as well as under Section 13(2) r/w 13(1)(d) of the Act and sentenced six months rigorous imprisonment and a fine of Rs.500/- with default sentence under Section 7 of the Act and one year rigorous imprisonment and a fine of Rs.500/- with default sentence under Section 13 (2) R/W 13(1)(d) of the Act.

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14. A reading of Section 7 of the Act will go to show that if a public servant accepts gratification other than legal remuneration in respect of official act, is liable for punishment. Section 13(1)(d) of the Act also describes about the misconduct of a public servant if he , by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage is liable for punishment.

15. So I am of the view that both Sections 7 and 13(1)(d) of the Act deals with the conduct of the public servant receiving gratification other than legal remuneration in respect of doing an official act. So I am of the view that the accused cannot be punished under Section 7 of the Act and also under Section 13(1)(d) of the Act even though he can be convicted under the abovesaid two Sections of law.

16. The learned counsel appearing for the appellant made submission that some leniency may be shown on the accused regarding the sentence. But the said request cannot be acceded to because the minimum sentence prescribed under the Act is only one year and the minimum sentence alone is awarded by the learned trial Judge under Section 13(1)(d)r/w 13(2) of the P.C.Act 1988.

17. In fine, the appeal is allowed in part and the sentence awarded by the trial Court in Special C.C.No.1 of 1998 under Section 7 of the Act alone is set aside. In other respects, the Judgment of the learned Special Judge in C.C.No.1 of 1998 is confirmed. The trial Court shall secure the accused and sent to prison to serve out the sentence.

Sd/
Asst.Registrar

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Sub Asst.Registrar

sg

To

1.The Special Judge, Pondicherry
2.The Inspector of Police,SPE/CBI/ACB,Madras
3.The Special Public Prosecutor for CBI Cases, High Court,Madras.

1 cc To Mr.T.P.Manokaran, Advocate, SR.34998.

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